

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TROY PATRICK JACKSON,

Defendant-Appellant.

UNPUBLISHED

July 27, 2004

No. 249622

Ingham Circuit Court

LC No. 02-000759-FC

Before: Bandstra, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of two counts of armed robbery, MCL 750.529, assault with intent to rob while armed, MCL 750.89, and possession of a firearm during the commission of felony, MCL 750.227b. Defendant was sentenced to concurrent terms of 130 to 300 months' imprisonment for the armed robbery and assault with intent to rob counts, to run consecutive to 2 years' imprisonment for felony-firearm count. We affirm.

Defendant's only issue on appeal is whether the trial court abused its discretion in denying his motion for a mistrial when, shortly after the jury started deliberating, a juror disclosed to the trial court that he had just realized that he was a childhood acquaintance of defendant's uncle. We review a trial court's denial of a motion for a mistrial for an abuse of discretion. *People v Alter*, 255 Mich App 194, 205; 659 NW2d 667 (2003). "'A mistrial should be granted only for an irregularity that is prejudicial to the rights of the defendant . . . and impairs his ability to get a fair trial.'" *Id.*, quoting *People v Haywood*, 209 Mich App 217, 228; 530 NW2d 497 (1995). We also review a trial court's finding that a juror has the ability to render an impartial verdict for an abuse of discretion. *People v Roupe*, 150 Mich App 469, 474; 389 NW2d 449 (1986). "An abuse of discretion is found only if an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling made." *People v Williams*, 240 Mich App 316, 320; 614 NW2d 647 (2000).

Shortly after deliberations started, a juror notified the trial court that he realized he was a childhood acquaintance of defendant's uncle when, that morning, he saw defendant's uncle in the courtroom for the first time since the trial started, and noticed that the two men shared the same last name. The juror stated that he had known defendant's uncle since grade school where they played football together, but that in the twenty-one years since they graduated from high school, they only "r[a]n into each other" and casually spoke on six or seven occasions, the last of which was one and a half to two years before trial. The two men never socialized together, and

only conversed when they ran into each other. The juror described defendant's uncle as a friend, but not a close friend.

The juror was concerned about how being on the jury would affect his relationship with defendant's uncle if they saw each other in the future. The juror stated that he was willing to follow the judge's instructions, and that if he, after deliberating with the other jurors, concluded that defendant committed the crimes with which he was charged, he would be able to take those findings and apply them to the law to reach a guilty verdict. The juror indicated that his perception of defendant's testimony had not changed since he realized that he knew defendant's uncle. The juror admitted that the fact that he knew defendant's uncle would be "in the back of [his] mind" while he was deliberating, but believed he could deliberate and be fair based on the evidence he heard, the law, and the jury instructions. The juror stated that the fact that he knew defendant's uncle would not "play into [his] decision." The trial court then ordered the juror not to discuss his relationship with defendant's uncle with the other jurors.

Defense counsel moved for a mistrial on the grounds that he did not believe the juror could be impartial. Despite the juror's statement that he "barely knew" the rest of defendant's family, and that he "really d[id]n't know [defendant's] parents very well," defense counsel was concerned that the juror knew that defendant's father went to prison for armed robbery. However, the trial court was not convinced that the juror knew about defendant's father's criminal history. The trial court stated that the fact that the juror knew defendant's uncle might weigh in defendant's favor, and that the prosecution was willing to proceed with deliberations. The trial court denied defendant's motion for a mistrial, and defendant was found guilty and sentenced as described above.

Defendant now argues that the trial court abused its discretion in denying his motion for a mistrial. We disagree. A defendant has the right to an impartial jury that bases its verdict only on evidence admitted at trial. *People v DeHaven*, 321 Mich 327, 334; 32 NW2d 468 (1948). However, "'due process does not require a new trial every time a juror has been placed in a potentially compromising situation.'" *People v Grove*, 455 Mich 439, 472; 566 NW2d 547 (1997), quoting *Smith v Phillips*, 455 US 209, 217; 102 S Ct 940; 71 L Ed 2d 78 (1982). "[I]t is virtually impossible to shield jurors from every contact or influence that might theoretically affect their vote. Due process means a jury capable and willing to decide the case solely on the evidence before it." *Grove, supra* at 472, quoting *Smith, supra* at 217.

Here, one of the jurors admitted that he was a childhood acquaintance of defendant's uncle, and had "run into" him six or seven times in the past twenty-one years, and only spoke briefly on those occasions. The juror stated that he could deliberate and be fair based on the evidence he heard, the law, and the jury instructions, and that the fact that he knew defendant's uncle would not affect his decision. Therefore, defendant received the due process to which he was entitled, i.e., a jury capable and willing to decide the case solely on the evidence before it. *Grove, supra* at 472. We are not convinced that the nature of the juror's relationship with defendant's uncle denied defendant a fair and impartial jury. Moreover, defendant is entitled to a fair trial, not a perfect one. *People v Grant*, 445 Mich 535, 551; 520 NW2d 123 (1994). The trial court did not abuse its discretion in denying defendant's motion for a mistrial, and defendant is not entitled to relief on this basis.

To the extent defendant argues that the trial court should have removed the juror because the juror would have been excused during voir dire had the parties known of the juror's relationship with defendant's uncle, we disagree. This Court has reasoned that "when information potentially affecting a juror's ability to act impartially is discovered after the jury has been sworn, and the juror is allowed to remain on the jury, the defendant is entitled to relief on appeal if it can be established either (1) that the juror's presence on the jury resulted in actual prejudice, (2) that the defendant could have successfully challenged the juror for cause, or (3) that the defendant would have 'otherwise dismissed' the juror by exercising a peremptory challenge had the information been revealed before trial." *People v Daoust*, 228 Mich App 1, 7-8; 577 NW2d 179 (1998); *People v Manser*, 250 Mich App 21, 27; 645 NW2d 65 (2002).

As noted above, we are not convinced that the juror's presence on the jury resulted in actual prejudice. Additionally, defendant has not established that he could have successfully challenged the juror for cause, especially in light of the fact that the juror was merely a childhood acquaintance of defendant's uncle, had only seen and briefly conversed with him on a few occasions in the past twenty-one years, and assured the trial court that the fact that he knew defendant's uncle would not affect his decision. See MCR 2.511(D)(3). Moreover, there is nothing to indicate that the juror knew of defendant's father's conviction for armed robbery; indeed, the juror stated that he "hardly knew" defendant's uncle's family, and defense counsel did not question the juror on this point. Finally, defendant has not established that he would have "otherwise dismissed" the juror by exercising a peremptory challenge had his relationship with defendant's uncle been revealed before trial. Indeed, defendant argued that had the prosecutor been unsuccessful in challenging the juror for cause, the prosecutor would have sought to exercise a peremptory challenge to remove the juror.

Finally, defendant's contention that his indication to the trial court that he was willing to have the case decided by a jury of eleven is a "strong indication" that he would have exercised a peremptory challenge had the juror's relationship with defendant's uncle been revealed before trial is not relevant, because defendant argued that it was the prosecution that would have exercised the peremptory challenge, not himself. Moreover, we are not persuaded that defendant was denied a fair and impartial jury.

We affirm.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra